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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/530,509

04/06/2005

Christian Baccelli

1107-050938

4953

28289

7590

08/18/2006

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EXAMINER

GEORGE, TARA R

ART UNIT

PAPER NUMBER

3733

DATE MAILED: 08/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/530,509

Applicant(s)

BACCELLI ET AL.

Examiner

Tara R. George

Art Unit

3733

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 April 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 7-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 7-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 April 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☒ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>03 November 2005</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Priority

Acknowledgment is made of applicant's claim for foreign priority based on an application filed in France on 7 October 2002. It is noted, however, that applicant has not filed a certified copy of application 0212397 as required by 35 U.S.C. 119(b). Please send a certified copy of the original foreign application, specification, and drawings upon which it is based, as well as a translation if the documents are not in the English language.

Specification

1. The disclosure is objected to because of the following informalities:
 - a. The respective heading should precede each section of the specification- i.e. "Background of the Invention", "Brief Description of the Drawings", etc.
Please make the appropriate corrections.
 - b. Reference number 34 is referred to as a "wall" (page 6 line 25) and also as a "plane first face" (page 6 line 37). However, a reference number must have a singular definition, not multiple. Please make the appropriate correction.
2. The abstract of the disclosure is objected to because the term "said" is considered to be legal language and, therefore, is not appropriate for the abstract of the disclosure. Correction is required. See MPEP § 608.01(b).

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

Claims 7-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. Claim 7 recites the limitation "the axis" in line 5. However, there is insufficient antecedent basis for this limitation in the claim since there is no earlier recitation or limitation of an axis in this claim and where it would be unclear as to which line or position the limitation was referring to. Appropriate correction is required.

4. Claim 7 recites the limitation "the axis (Y, Y′)" in line 13. However, there is insufficient antecedent basis for this limitation in the claim since there is no earlier recitation or limitation of an axis (Y, Y′) in this claim and where it would be unclear as to which line or position the limitation was referring to. Appropriate correction is required.

5. Claim 7 recites the phrases "may be" in line 18 and "by activation of the clamping member" in line 21. These phrases use functional language that is not definite. Appropriate correction is required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 7,8,10,13, and 14 are rejected under 35 U.S.C 103 (a) as being unpatentable over Haider (US Pat. 6,565,567) in view of Perra et al. (US Pat. 6,443,953).

Haider discloses a system (see Figure 1), which comprises a screw 12, an elongate connecting member 11, and a fastening system. In the fastening system disclosed by Haider the screw has a body 14 and a head 16, which has the shape of a portion of a sphere and consists of a first spherical surface portion and a second spherical surface portion (see Figure 1). The fastening system comprises a clamping member 68 and a fastening member 20. The fastening member is formed in one piece and is ring-shaped, having a lateral wall 31 around an axial passage 30. The lateral wall includes a first aperture 22 that is adapted to cooperate with the clamping member and a second aperture, which has a first portion 36 and a second portion 34 that communicate with each other while being angularly offset (see Figure 5). The first portion of the second aperture has a diametral axis that substantially coincides with that of the first aperture and a rim that forms a bearing surface for the first spherical surface of the screw head. The second portion of the second aperture allows the screw head to pass through it, and the axial passage is adapted to receive at least one end of the connecting member and the screw head. Haider further discloses that when the clamping member is used to lock the system, the end of the connecting member and the screw head are immobilized against rotation and against translation in relation to the fastening member (see column 5 lines 28-30). Haider also discloses an intermediate member 38, with a first face that has a recess opening that forms a bearing surface for at least a portion of the second spherical portion of the screw head (see column 4 lines 55-57). The intermediate member is adapted for insertion into the axial passage and has a second face that is made to cooperate with the ends of the connecting member

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(see column 4 lines 53-55). Haider further discloses an intermediate member with a rib (that defines the spherically shaped screw head engaging surface) from each end of its first face (see column 4 lines 55-61) to cooperate with the end faces of the fastening member. He also discloses a connecting member 11 that has a circular cross section and an intermediate member 38 that includes a bearing surface with a cross section in the shape of a circular arc.

Haider discloses the claimed invention except for the use of at least two fastening systems and screws in the system. Perra et al. discloses a spinal implant system that comprises at least two fastening systems and screws in order to provide stability and immobilization for the misaligned bone segments (see column 1 lines 14-20 and column 2 lines 20-25). Therefore, it would have been obvious to one skilled in the art at the time the invention was made to construct the system of Haider, with the system having multiple fastening systems and screws, in view of Perra et al., in order to provide stability and immobilization for the misaligned bone segments.

Fig. 1

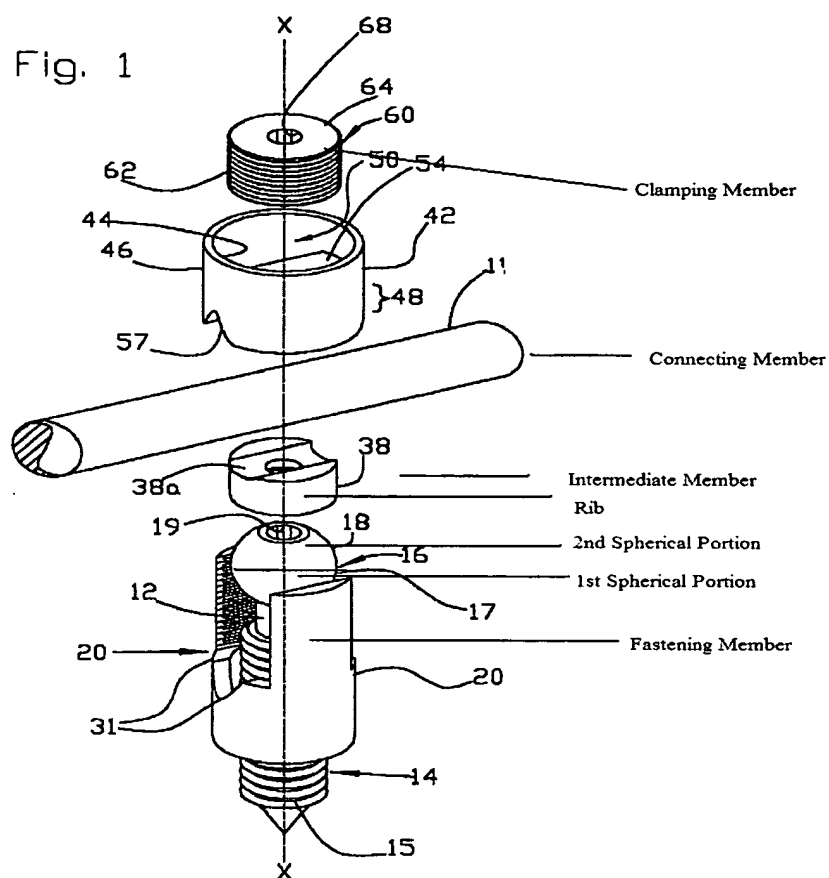
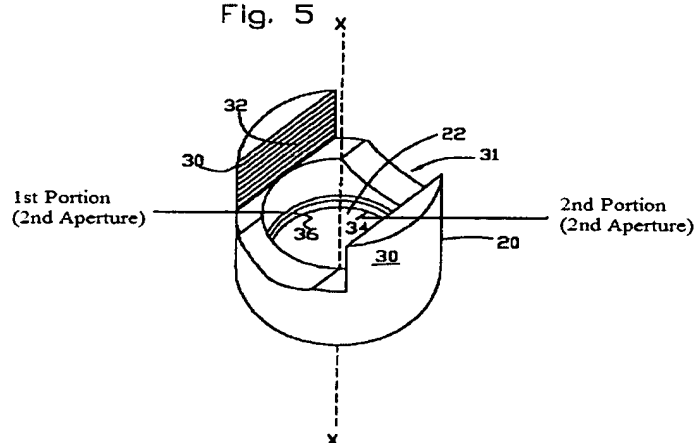


Fig. 5



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7. Claims 9, 11 and 12 are rejected under 35 U.S.C 103 (a) as being unpatentable over Haider (US Pat. 6,565,567) in view of Perra et al. (US Pat. 6,443,953) as applied to claims 7, 8, and 10 above, and further in view of Grosse et al. (US Pat. 5,573,536).

The combination of Haider and Perra et al. discloses the claimed invention except for the elongated connecting member with the substantially planar first and second faces and a longitudinal recess that defines two inclined bearing surfaces. Grosse et al. teaches to provide an elongated connecting member (see column 2 line 37) with substantially planar first and second faces and a longitudinal recess 7 that defines two inclined bearing surfaces (see Figure 4). The purpose of the longitudinal recess is to provide a high mechanical holding force in the marrow space by reducing the chance of rotation and thereby providing more stability for the immobilization system (column 2 lines 20-22). Therefore, it would have been obvious to one skilled in the art at the time the invention was made to construct the system of the combination of Haider as modified by Perra et al. with the elongated connecting member having substantially planar first and second faces and a longitudinal recess that defines two inclined bearing surfaces in view of Grosse et al. in order to provide more stability for the immobilization system.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO-892 for art of cited interest.

Any inquiry concerning this communication should be directed to Tara George whose telephone number is 571-272-3042. The examiner can normally be reached on

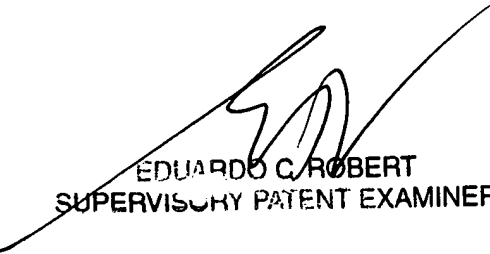
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M-F 8am-5pm. If attempts to reach examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert, can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either private PAIR or Public PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have any questions about access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll free).

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EDUARDO C. ROBERT
SUPERVISORY PATENT EXAMINER